

ORIGINAL

Michael Torres Jaimes #82661-198
In Pro Per
Federal Correctional Facility Terminal Island
1299 Seaside Avenue
Box 3007
San Pedro, CA

Defendant In Pro Se

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 05 2007
at 1 o'clock and 00 min. P.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE No.: CR 03-00501-SOM

MICHAEL TORRES JAIMES,

Defendant.

MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

U.S. v. Michael Torres Jaimes
MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

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1 12. State concisely every ground on which you claim that you
 2 are being held unlawfully. Summarize briefly the facts
 3 supporting each ground

4 Since Defendant Michael Jaimes, is not versed in the law, or
 5 the appropriate education in this realm, this entire Motion
 6 is being prepared by an untrained inmate, with slight abilities
 7 in the Spanish language, with no training in law, but with
 8 much compassion and an unerring eye for goodness in people,
 9 which is manifested in Michael Jaimes. No consideration
 10 whatsoever is being given by Michael Jaimes, who is indigent.
 11 Defendant, Michael Jaimes, teaches Meditation and Yoga, which
 12 is how this scribe was introduced to Michael Jaimes.

13 The statement of Michael Jaimes, partial and censored as it is,
 14 given the fear of acrimony and retribution from trial counsel,
 15 is being filed concurrently herewith, and incorporated herein
 16 by reference as though set forth at this point verbatim.

17 The following is a summary of those grounds, that with the
 18 assistance of competent and patient counsel, could be elucidated
 19 and expanded upon, if it please this Honorable Court"
 20

21 A. Ground one - Denial of effective assistance of counsel by
 22 reason of Structural Defect, in application and explanation of
 23 the Indictment and the charges against Defendant.

24 Defendant understood, that his counsel is required to provide
 25 her undivided loyalties to petitioner throughout the period of
 26 representation, including, but not limited to trial, plea
 27 bargaining and sentencing, as well as Appeal if an insurmountable
 28 conflict is not created, due to omission during trial & Sentencing.

1 In the case at bar, the combination of the various conflicts of
2 interest in the premises interfered with and prevented counsel
3 from fulfilling her said legal and ethical obligations to
4 Petitioner. Petitioner avers, that said failure should be
5 considered to be Structural Defect, which so seriously infects
6 the trustworthiness of the legal process such that reversal is
7 mandated without any specific showing of prejudice.

8 Most Glaring, is the fact that the Presentance Report, prepared
9 by the Probation Officer is wrong on its face, because of
10 innappropriate and erroneous conduct by Trial Counsel.

11 Petitioner was specifically instructed at the time of the
12 Interview, NOT TO DISCUSS HIS DRUG DEPENDANCE. Petitioner was
13 instructed not to discuss his substance and drug abuse. He
14 was told, that it would be addressed in a separate Motion
15 to supplant the Probation Report, so that the court would be
16 informed, that in fact, Petitioner should receive Drug Abuse
17 Prevention Counseling while at the BOP, which would entail
18 a comprehensive live in program known as DAPP.

19 This program, which is heralded in amny circles, has a unique
20 live in portion to it, in which substance abuse and depndancy
21 are dealt with in a group setting, followed up, by intense
22 supervision for a year upon release, after a 6 month half way
23 house program.

24 Petitioner, Michael Jaimes, was prevented from explaining to
25 this Honorable Court, his life long struggle with substance
26 abuse, which resulted in an incorrect Probation Report being
27 presented to the court. This Structural Error, has caused
28

1 Petitioning Defendant, Michael Jaimes, to be denied acceptance
2 to the DAPP program while at the BOP, given that the Probation
3 Report, failed to discuss his drug abuse, thus precluding his
4 participation in this program, which is of great value to his
5 future. The emotional pain, duress and suffering, brought on
6 by the realization that his reliance on his attorneys advice,
7 has precluded him from improving his life, is cruel and unusual
8 punishment, which this court should be aware of.

9 Petitioner requests, that a revised and new Probation Report
10 be prepared, this time, with Petitioner/Defendant, Michael
11 Jaimes, permitted to discuss his drug abuse past."

12 Petitioner prays, that this Court order a Revised Probation
13 Report, this time, permitting Defendant to discuss all aspects
14 of his life, and providing witnesses to his life before
15 incarcerated. All of this was specifically prohibited by
16 Trial Counsel, and it is so reflected in the Probation Report,
17 which notes specifically, that Mr. Jaimes was instructed not to
18 discuss his substance abuse with the probation officer for
19 whatever reason.

20
21 Petitioner prays and hopes, that this Honorable Court, considers
22 Michael Jaimes conduct and development while incarcerated, as
23 well as review of the corrected Probation Report, to Set Aside
24 the judgement, and give consideration to the evidence at hand.

1 B. Ground two Conviction obtained was unlawfully induced or
2 without understanding of the nature of the charges and the
3 consequences of going to trial.

4
5 Petitioner went to trial on the charges of the Indictment,
6 since his will was overcome by and overborne by Counsel's
7 failure to properly prepare for trial, or explain the consequences
8 of certain evidence that was being excluded to the Defendants
9 consternation and vehement objections.

10 Counsel had ample time to prepare for trial, or to work out a
11 plea agreement. Counsel was given unlimited resources with which
12 to work, and yet Counsel abjectly failed and refused to
13 prepare the case, and negotiate a Plea Agreement.

14 Counsel abjectly failed and refused to prepare the case for
15 trial, as communicated by Defendant. Counsel interviewed no
16 witnesses which Defendant believed would assist in the case,
17 prepared no affirmative defenses, was nearly illiterate respecting
18 the various aspects of the drug trade and the addiction of
19 Defendant, which was the subject matter of the within case,
20 and failed to provide to Petitioner, Counsel's advice and analysis
21 respecting the strengths and weaknesses of Petitioner's defense.

22 It was as if Counsel had determined that Petitioner was Guilty
23 and needed help for his drug dependency, which was a life time
24 struggle, and that no pretrial preparation was necessary or
25 indicated, nor was a Plea considered, which would not provide
26 Petitioner with the right remedial treatment he might get in Prison.
27
28

PRAYER

Wherefore, movant prays that the Court grant him all relief to which he may be entitled to in this proceeding, including but not limited to dissolution of the Presentence Report, an expungement of the Judgement of Conviction, and a J.O.A. or a new trial.

The failure to properly assess the evidence by Trial Counsel, constitutes the unprofessional conduct that must be shown in claiming a constitutional violation involving ineffective assistance of Counsel.

Respectfully submitted,

MTJ 08/29/07

Michael Torres Jaimes
Plaintitioner in Pro Se

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